92-962

Supreme Court, U.S.
FILED
OCT 30 1992
OFFICE OF THE CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Tern, 1992

IN RE: EARLENE POLYAK

EARLENE POLYAK Petitioner

v

COMMISSIONER OF INTERNAL AND U.S. TAX COURT Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

QUESTIONS PRESENTED

1. Is the Court of Appeals for the Sixth Circuit proper jurisdiction for TITLE IV REVIEW after initial record filed in the Court of Appeals in the Eleventh Circuit by the U.S. Tax Court, and should 91-5206 be returned to the Eleventh Circuit, and Right of Appeal Rule 3 FRcivP be reserved for Constitutional Question?

2.Is disregard of IRC Individual Deductions in violation of Civil Rights Act 1964, Title VII which prohibits discrimination against age sex race and disability, as amended Public Law 102-166 to strengthen civil rights and 42USC 1981 in the right of "(a) party to sue violated in the dismissal of Complaints?

3. Is the Department of Justice allowed to transfer 91-5206 from Eleventh Circuit to already prejudiced Sixth Circuit where all appeals are dismissed in docket control, and join to litigation to sell properties in unrelated cases 91-5245 and 91-5246?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1992

In RE: EARLENE POLYAK

EARLENE POLYAK — Petitioner

v

COMMISSIONER OF INTERNAL REVENUE AND U.S. TAX COURT — Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner prays that writ of certiorari issue from this Supreme Court to review the orders of the United States Court of Appeals for the Sixth Circuit,and the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. §2101.

Cases Nos: 91-2237; 91-1314, and 91-1212, United States Court of Appeals for the Sixth Circuit, and 91-5206 and 91-5414 Inited States Court of Appeals for the Eleventh Circuit, and 2794-88 Commissioner and U.S. Tax Court.

Case No.91-722329 CIV-Zatkoff, United District Court Eastern Division at Detroit, No.1658 United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinions of the United States court of Appeals for the Sixth Circuit are set forth in Appendix A. The opinions of the United States Court of Appeals Eleventh Circuit, Appendix B, and the opinions for the Commissioner of Internal Revenue and the United States Tax Court are set forth in Appendix C. Clopinions 92-1658-722329.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit denying petition fro rehearing was filed on August 3, 1992, and this petition for writ of certiorari is timely within niney days thereof.

The jurisdiction of this Supreme Court is invoked pursuant to Article III Sec., 2 which states that all judicialpower shall extend in all causes of law and equity, between state and citizens of another state; between citizens of different states.

The jurisdiction is invoked 28 U.S.C.2101; 28 U.S.C. 1443; 42 U.S.C. 1981;1982, and 1983;

Civil Rights Act of 1964, and as amended to strengthen 42 U.S.C. 1981 in right of "(a)" party to sue Fifth Seventh, and Fourteenth Amendments.

The federal and constitutional questions of jurisdiction have been raised in all of the Courts.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amen. V Cl 3&4.

The pertinent portion of theSeventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of jury trial shall be preserved.

U.S. Const. Amen. VII.

The pertinent portion of the Fourteenth Amendment provides:

> No state shall make or enforce any law which shall abridge the priveleges and immunities of citizens of the United States:Nor shall any state deprive any

person of life, liberty, or property, without due process of law.

U.S. Const. Amen. XIV

28 U.S.C. 1443:Any of the following commenced in a state Court may be removed by Defendant to U.S. District court...

(1) Against any person who is denied or cannot enforce in the courts os such state a law providing for equal civil rights of citizens of the United States.

(2) For any act under the color of authority deprived from any law providing equal rights.

42 U.S.C. 1981:

All persons amended 11/21/9) "'a(a) person shall have the same right to sue,...to the full and equal benefit of the law.

42 U.S.C. 1982:

All persons of the United States shall have the same right in every state...to inherit purchase lease and convey real and personal property.

42 U.S.C. 1983:

Every person, who under the color of any statute, ordinance, regulation, custom or usuage of any state... subject or cause to subjected any citizen of the united States or other person within its jurisdiction thereto the deprivation of rights and priveleges secured by the constitution and laws shall be liable at law in equity or some other proceeding for the parties.

28 U.S.C. 2403:

> In action... where the constitutionality of a statute affecting the public interest is drawn into question

STATEMENT OF THE CASE

Petitioner petitions this Supreme Court to review the abuse of discretion and conflict of interest in the denial of due process by the United States Court of Appeals of the Sixth Circuit and the Court of Appeals of the Eleventh Circuit in TITLE IV REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS pursuant to Federal Rules of Appellate Procedure (App.B p.15).

Petitioner fulfilled all of the requirements of appeal of the Commissioner of Internal Order but was denied due process of review of appeal by all of the Judges in full Tax Court 2974-88 (App.C p.24).

Petitioner submitted TITLE IV REVIEW to the United States Court of Appeals for the Eleventh Circuit, in which trial(informal hearing) held on December 1, 1988, in Miami, Florida, but

delayed filing 91-5206 @ 100.00)(App. p. B17).

Petitioner mailed a motion to forward Records for TITLE IV REVIEW to the Clerk of the United States Tax Court, but Clerk filed motion as an appeal and requested one hundred dollar ($100.00) docket fee (App. B 17).

Meantime, the Clerk of the Court of Appeals sent one TITLE IV REVIEW as mistake filed in wrong Court and sent one hundred (`100.00) to the Tax Court(App. B p.22).

A writ of Mandamus was submitted to file TITLE IV REVIEW in the court of Appeals for the Eleventh Circuit, and 91-5206 was filled 91-5451 (App. A p. 4).

Mr. Joel Rabonivtz, Department submitted a motion to transfer 91-5206 described as appeal to the Court of Appeals for the Sixth circuit (App.16).

The Clerk of the Court of Appeals filed TITLE IV REVIEW as an appeal from District Court and sent briefing order on November 7, 1991.

A writ of mandamus to take TITLE IV REVIEW

(91-5206) filed as 91-2237 filed as appeal in Court of Appeals in the Sixth circuit as an appeal from District Court before the Judges for jurisdictional question was returned with writ of mandamus filed as a motion to dismiss appeal for lack of jurisdiction (App A p. 6).

This writ of mandamus with one hundred ($100.00) filing fee was returned with added parties and filed No. 91-2312(App. A p.5).

A second writ was submitted with one hundred (`100.00) filing fee to stay briefing for ruling on writ of mandamus to take 91-2237(5206 before the Court for jurisdictional question 91-1314(App A p. 4).

The Clerk demanded briefing on February 20, 1992. Petitioner submitted fifteen(15) briefs with suggestion for hearing em banc Feb 19/92.

Third writ of mandamus was submitted with one hundred ($100.00) filing fee to consolidate cases from the Cou t of Appeals 91-2237(5206).

A timely petiton for reharing was submitted on June 19, 1992. Timely Joint Appendix five(5)

copies submitted in 91-2237. It appears that Clerk of Court of Appeals Sixth Circuit marked out 91-5206 with 91-5245(delayed in the court of appeals from District Court, (1:86-0036 Earlene Polyak v William Boston and Boston Bates & Holt).

91-5451 was marked through and inserted 92-5246 District court Sixth circuit 1:85-0116 Earlene polyak v Jim Hamilton et al, in which motion to stay mandate for writ of certiorari to the Supreme Court pending.

During the time of trying to get TITLE IV corrected from appeal status, Petitioner submitted several grievances to the Chief Judge to correct Clerk's filing (App. A p.3).

Petitoner made a second attempt to get relief from Commissioner of Internal Revenue and Tax Court and Jeopardy Assessments for the delayed action by officers No. 91-CIV- 7339 Zatkoff.

91-CIV-7339 Zatkoff was dismissed for lack of jurisdiction in Detroit in Sixth Circuit (App.C1 p.29-40).

91-CIV- Zatkoff appealed 92-1658 to the Sixth Circuit (App. C1 p.30).

The Sixth Circuit dismissed 92-1658 alleging that Petitioner notice of Appeal tolled appeal period, under Rule 59, but the District Court did not rule on petition for rehearing and no new notice of appeal was required pursuant to rule 59(App.

Petitioner submitted timely brief teh (10) copies. the Department of Justice submitted ten copies of answer. Petitioner submitted timely Reply brief and five(5) Joint Appendix.

The Commissioner of Internal Revenue delayed 22020 S from April 1983, unitl sometime in 1989 (App. C1 p.29).

The United States Tax Court delayed the decision in 2974-88 from December 1, 1988, until March 12, 1990, a period of over two (2) years which accumulated unnecessary taxes in favor of the Commisioner of Internal Revnue.

The Clerk of the Court of Appeals in91-5206 Joint Appendix to Sixth Circuit Cases 91-5245 and 5246 is intentional disregard of FRcivP,and Petitioner fears entrapment.

REASONS WHY WRIT SHOULD ISSUE

The writ of certiorari should issue to the United States Court of Appeals for the Sixth Circuit and the United States Court of Appeals for the Eleventh Circuit to the denial of due process to return 91-5206(91-2337) TITLE IV REVIEW to initial jurisdiction in the Eleventh Circuit for Right of Appeal Rule 3 FRcivP.

The right of appeal should be preserved to the constitutionality of a substantive change in 213(e)redesignated section 213(d) by the Tax Equity & Fiscal Responsibility Act 182, passed in the Deficit Reduction Act of 1984, and new section 213(d)(2).

This provides that in certain situations lodging expenditures will be included in the definition of medical expenses for the purpose section 213 (5)(1)(b).

> 213 (d) provides (1) ...MEDICAL CARE... (A) for the diagnisis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

> The House Committee Report states... The Committee believes that a medical deduction for lodging expenses should be allowed in appropriate cases. H.Rept. 98-432,Part 2 at 1583(1984) to accompany H.R. 4170(Pub. L. 98-369).

In our intrepretation of Section 213(d)(2), we must keep in mind that pieces of new legislation that are liberalization of the law in the taxpayers favor,(and are) begotten from motives of public policy ...are not to be narroly construed. Helving v Bliss,293 U.S. 144 151(1934).

1. THE COURT OF APPEALS DENIES DUE PROCESS OF RIGHT OF APPEAL RULE 3 FRcivP.

The Court of Appeals denied due process of right of appeal Rule 3 FrcivP, and the deprivation of civil and constitutional rights in Individual Medical Deductions.

Title III Review of decisions of the Tax Court allows for decisions to be taken to more than one Court of Appeals,..."the original record shall be transmitted to the first Court...

Petitioner submitted TITLE IV REVIEW of intentional disregard and discrimination against review of appeal by full Court(all Judges) of the Internal Revenue Code and Sec 7433(a).

The motion to set aside order and forward records required in TITLE IV REVIEW was filed in error as a notice of appeal in the the Tax Court, but records were first forwarded to the Eleventh Circuit.

The Honorable Marvin Peterson determined jurisdiction of 91-5206(91-2237) in denial of motions to transfer 2974-88 back to Detroit for trial on November 28, and December 1, 1988.

Judge Peterson held trial(informal hearing) without eighty-nine (89) pages of records signed for by IRS on June 12, 1987, before they cut off stipulations.

> If you need documents which have been given to the internal Revenue to support your claim, you should ask the government lawyer to bring them to court for trial of your Case so that you can offer them in evidence of your claim. Where original documents are lost or destroyed yoy may offer copies if you have them.Internal Revenue Service Pub. 1(Rev. 6-89).

Judge Peterson threatened Petitioner that she would lose 2974-88 if she did not allow De. Rodney Herman, a physician she went to on emergency in Florida, to testify against her. He testified as Expert witness in violation of

day notice in violation of IRC 143(f). Dr Herman further violated IRC in sitting just outside Judge's bench in hallway. Dr. Herman testified without glasses and could not read reference from Cardiac Unit of University of Alabama Hospital in 1987.

When Petitioner tried to tell Judge Peterson about harassesment by Internal Revenue officers, Judge stated,I do not want to hear anything that happened before this trial.""As a tax payer you have ther right to be fairly, professionally, promptly and courtseously, by the Internal Revenue Service. Bill of Rights,Department of Treasury, Internal Revenue Service Pub. 1(Rev. 689)

Petitioner contends that adverse opinion held over two (2) years from December 1,1988, to March 12, 1990, is in disregard for Rule 182(b) U.S. Tax Court.

> ...a special trial judge who conducts the trial in a case(other than a small tax case) where the amount of deficiency nor the amount claimed exceeds five thousand dollars (`5000,00 dollars shall as soon thereafter such trial as soon an practiable, prepare proposed findings of fact and opinion, which shall be promptly reprted to the Chief Judge

The dismissal of TITLE IV REVIEW as an fron a District Court denied due process of Right of Appeal Rule 3 FrcivP.

The Court of Appeals Sixth circuit disregards that TITLE IV REVIEW 91-5206 for the review of the reckless and intentional disregard of IRC 7433(a).

The Clerk of the court of Appeals of the sixth Circuit issued final extension of briefing and fifteen(15) briefs were submitted in 91-2237 with suggested hearing en banc.

A timely petition for rehearing was submitted with five(5) Joint Appendix. A motion to stay mandate for writ of certiorari to the Supreme Court has been submitted for the third time. Petitioner requests ruling on jurisdiction to return TITLE IV REVIEW 91-5206 to the original jurisdiction to the Seventh Circuit, and Right of Appeal Rule 3 FRcivP.

2. THE DISTRICT COURT DENIED DUE PROCESS IN RELIEF FROM INTENTIONAL DISREGARD OF IRC AND AWARD OF JEOPARDY ASSESSMENTS IRC

The United States District Eastern Division Detroit, Michigan assigned Complaint and

Demand for Jury Trial for relief in damages for intentional disregard and discrimination agai-st IRC 7433(a), to Magistrate and 91- 2237 CIV-ZATKOFF Dismissed on Department of Justice motion improper jurisdiction and res judicata.

This hearing was held without notification to Petitioner on April 21, 1992. Dr. Herman was relieved as after a letter from his brother-in law to Judge Zatkoff as a clerical error.

Petitioner sought damages for threats and harassement by Internal Revenue officers, and Jeopardy assessments for delayed orders held in both 22040-87S from April 15, 1994 to 1990 in the overpayment of one thousand eighty-nine (`1,089.00. The interest rates rose to thirteen per cent during the delayed overpayment.It is clear from this order that IRS did not intend return this money(See order).

Petitoner sought damages for the delay in holding 2794-88 from December 1, 1988 over two (2) years until March 12, 1990, and accumulated interest owed. Although Petitioner submitted

the Tax Court filed as an appeal and Petitioner who depends on senior citizen bank accounts, and properies were threatened, forcing payment in addition to cost of appeals.

The Department of Justice alleges disregard that case is for damages and Jeopardy Assessment under IRC 6673. Congress has provided an avenue for review of jeopardy assessments Sec. 7429, and provides that such review shall be taken in the District court."And delay by such other means may, likewise , subject the taxpayer to an award of damages." United States Tax Court Court Reports,Abrahams v Commissioner 82 p.403.

This complaint to the District Court cannot be resjudicata, since this is the Avenue provided in 7429.

Petitioner appealed 91-73329 DT to the Court of Appeals Sixth Circuit. She submitted briefs Response Brief to Department of Justice, and five(5) joint Appendix but 92-1658 was dismissed on notice of appeal tolling appeal period. The District Court did not rule on petifor rehearing thus no new notice of appeal

The Sixth Circuit did not consider petition for rehearing and mailed mandate. Petitioner motion to stay mandate returned unfiled.

3. THE TAX COURT FINDS APPEAL TO INTERNAL REVENUE DENIAL OF MEDICAL DEDUCTIONS CASE OF FIRST IMPRESSION.

The Tax Court finds appeal to the disallowance of medical deductions a case of first impression under the new legislation in 1984.

Judge Norman Wolfe stated that Petitioners' have born their burden of proof that Mrs Polyak was required to reside in Florida because of her health. Judge mtntioned that she might obtain some relief under new legislation in 1984.

But The Tax Court has denied review of Judge Peterson's order of March 12, 1990 by the full court of Judges. Petitioner has been informed that she has a right to review by the full Court.

In addition to disallowance of lodging the Tax Court discriminates in disallowing air-conditioner prescribed by heart specialist IN Individual Allowances for others under IRC.

Petitioner has been denied review under new legislation in 1984 by the full Tax Court, where it appears a conflict of interest in that Judge Wolfe stated she might get relief for expensive medical care.

Petitoner has been denied TITLE IV Review, and right of Appeal "one Judge decision under Rule 3 FRcivP.

Petitioner should not have to pay any more expense for medical care that orher' who are granted medical deductions for air-conditioners and other expensive means of survival.

Petitioner disagrees with the correlation between her need for medical care and Bilder. Commissioner v Bilder, 369 US 499(1962). It is common knowledge that new legislation in 1984 is more recent than old case in 1962, and it was only won on Petition for Rehearing.

Judge Peterson grounds 2794-88 in Bilder in three prong theory, and admited Petitioner met two prongs of this one Judge decision. This decision must be reviewed in light of 1984.

In addition to intentional disregard of the IRC 7433(a), Petitioner has been threatened that she would lose a lot of money if she appealed disallowance in tax deductions by a Appeals Officer in Detroit.She was threatened again by District counsel in Miami, Florida.

Petitioner was embrassed when this case 2974-88 was written up in national papers and refused interview with reporters.

CONCLUSION

Petitioner seeks writ of certiorari to issue to return 91-5206 TITLE IV REVIEW to the original jurisdiction in the Eleventh Circuit, and due process of right of Appeal Rule 3, with relief in compensation for denied medical deductions, and Jeopardy Assesments.

On the 28th day of October, 1992.

Respectfully submitted,

Earlene Polyak
4063 Hood Road
Palm Beach Gardens,
Florida 33410
(407) 627-3564

Certificate of Service

I certify that a true copy of this pleading has been mailed to Mr. Joel Rabinovitz, U.S. Department of Justice, P.O. Box 502, Washington, District of Columbia 20044., and to the Solicitor General,Department of Justice, Washington, D.C. 20530

Earlene Polyak

I certify that the above is true to the best of my knowledge and belief.

_____
Earlene Polyak

STATE OF FLORIDA
COUNTY OF PALM BEACH

_____
NOTARY PUBLIC

My Commission expires: _____

APPENDIX A

In the Court of Appeals for the Sixth Circuit 91-2237(91-5206 TITLE IV REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENC BOARDS COMMISSIONERS AND OFFICERS 11 the Cir).

91-2237 filed on November 7, 1991.

Petition for Rehearing denied on August 3, 1992.

Before:MARTIN and MILBURN Circuit Judges and PECK Senior Judge.

91-2312 Writ of Mandamus to take 91-2237 before the Judges for ruling on jurisdiction.

March 23 1992

Before:KEITH and MARTIN Circuit Judges, and CELEBREEZE Senior Judge.

91-1314 Writ of mandamus to stay briefing pending ruling on jurisdiction.

Denied NORRIS and SUHREINRICH and CONTE Senior Judge.

91-1212 Writ to consolidate cases denied on May 6, 1992

Beore:NELSON and NORRIS and KRUMPANSKY Senior Judge.

In the Court of Appeals for the Sixth Circuit 92-16 58.

Earlene Polyak v the Commissioner of Internal Revenue and the United States Tax court for Jeopardy Assessments for delayed decision in order on December 1, 1988 over (2) yewars on March 12, 1992 2794-88.

Jeopardy assessment for delay from April 15, 1987 to 1990 in 22040-87.

Denied without consideration of Petition for Rehearing on on August 18, 1992.

UNITED SRATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALEX L.POLYAK; EARLENE POLYAK

FILED AUG 3 1992

v

92-2237

COMMISSIONER OF INTERNAL REVENUE

BEFORE: MARTIN AND MILBURN, Circuit Judges, PECK, Senior Judge.

This pro se appellant petitions for rehearing of this court's June 10, 1992, decision deny ing her request for writ of mandamus and her "Second Grievance to the Chief judge in the Clerk's abuse of discretion."

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended any point of lAW OR FACT IN ITS June 10, 1992 order FRcivP Rule 40(a).

Accordingly, it is ordered that the petition for rehearing be and is hereby denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

No. 91-2237

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALEX POLYAK; EARLENE POLYAK

Petitioners-Appellants FILED JUN 10 1992

v

COMMISSIONER OF INTERNAL
REVENUE

BEFORE: MARTIN and MILBURN, Circuit Judges, and
PECK, Senior Circuit Judge.

Upon consideration of the appellant's Petition for wrti of mandamus to Mr. Leonard Green, and appellant's Second Grievance to Chief Judge in Clerk's abuse of discretion, seeking the return of this Case to the Eleventh Circuit for Title IV Review, we conclude that the requested relief has already been denied by this Court.

It is ordered that the petition and grievance be, and is hereby denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green, Clerk

No. 91-2312
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In RE: EARLENE POLYAK FILED MAR 23 1992

ORDER

BEFORE: KEITH AND MARTIN, Circuit judges; and
CELEBREEZZE Senior Circuit judge.

On February 18, we entered an order denying petitioner's request for a writ of Mandamus directing the Clerk of this Court to file a previously submitted document as a mandamus petition instead of construing it as a motion to dismiss in Case No. 91-2237 Polyak v Commissioner. She now seeks rehearing of that order.

Upon consideration of the petition for rehearing of the original mandamus submitted by the petitioner in this matter, we conclude she presents no new arguments not already reviewed by the panel. The issue of venue in case no. 91 2237 should be addressed as a part of the consideration of that case and not a separate mandamus review. Rehearing is denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOV 18 1991

Earlene Polyak
4063 Hood road
Palm Beach Gardens
Florida 33410

RE: 91-2237
Polyak vs CIR
District No. 2794-88

Dear Mrs. Polyak:

The Court received your Petition for writ of mandamus to Mrs leonard Green, and Check #443 this date.

The Court has filed your Petition for Writ of Mandamus to Mr Leonard Green as a motion to dismiss the above appeal for lack of jurisdiction. Court policy does not require a fee for filing a motion.Therefore, your check is returned.

Yours very truly,
Leonard Green Clerk
Ms.Ernestine Tennyson

cc: Abraham N.M. Shashy

No. 91-1314

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:EARLENE POLYAK FILED JUN 11 1992

Petitioner

BEFORE: NORRIS and SUHREINRICH, Circuit Judges, and CONTE Senior Circuit Judg

The petitioner is a pro se litigant who submitted a petition for writ of mandamus which we construed as seeking an order directing the Clerk's office to establish a new briefing schedule in Polyak et al v the Commissioner of Internal Revenue No. 91-2237, an appeal (Title IV Review) from the United States Tax Court. We denied relief in an order entered on April 10,1992. The petitioner now seeks a rehearing of that order.

We have reviewed our prior order and the present petiton for rehearing. We conclude the presents no new arguments which would warrant further review.

The petition for rehearing denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green Clerk

IN RE: EARLENE POLYAK FILED MAY 6 1992

The petitioner has submitted to the Court a petition for rehearing a writ of mandamus with a suggest that it be considered initially en banc. The petition has been circulated to all active Judges of this court and no Judge favors the suggestion for en banc review.

It therefor is ordered that the suggestion for initial hearing en banc review is denied.The petition for writ of mandamus shall be referred to a regular three Judge panel of the Court for review and disposition.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

No. 91-1212

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: EARLENE POLYAK FILED MAY 19 1992

BEFORE: NELSON and NORRIS, Circuit Judges, and KRUPANSKY Senior Circuit Judge

The petitioner is a persistent pro se litigant who has submitted documents to this Court bearing the numbers of cases other than those on this Court's docket. The Chief deputy Clerk has returned those documents with instructions that future submissions bearing multiple, unrelated numbers would also be returned to her without being filed.

The petitioner has now filed a document entitled a "second petition for writ of mandamus to file brief with above numbers." She apparently challenges the actions of the chief deputy clerk and seeks to file an appellate brief bearing the numbers of actions filed with this court, the cCurt of Apeals for the Eleventh Circuit, and the United States Tax Court. Under the portion of the petition entitled "Relief

Requested "she seeks monetary injunctive relief against the Internal Revenue Service.

As part of the present submission, the petitioner requested this matter be presented initially to the court sitting en banc. The petition was circulated to all axtive judges of the court. Initial en banc review was denied and the petition was transferred to a regular three judge panel of the court.

Upon review of the petition, we cannot discern any basis for mandamus relief, The chief deputy clerk was correct in insisting the petitioner's briefs and other papers include only the number of relevant material. The ,atters involving the Internal Revenue Service go to the merits of of her appeal from the Tax Court and are not the proper subject of a collateral mandamus petition.

It therefore is ordered that the petition for writ of mandamus is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green, clerk

Case No. 91-2237
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Petitioner

FILED JAN 6 1992

v

ORDER

COMMISSIONER OF INTERNAL REVENUE

Upon consideration of the appellant's motion to stay briefing pending writ of mandamus, and to return this case to return this case to the Eleventh Circuit Title IV Review,

It is ordered that the motion be, and it hereby denied.

Furth more, the briefing schedule will be resumed with appellant's brief due 14 days from the date of the order.

ENTERED PURSUANT TO RULE 8(b)
RULES OF THE SIXTH CIRCUIT

signed Leonard Green

APPENDIX B

In the United States Court of Appeals for Eleventh Circuit.

91-5206 TITLE IV REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES BOARDS COMMISSIONERS AND OFFICERS.

91-5451- Writ of Mandamus to file TITLE IV REVIEW.

Denied:August 26, 1992.

Before: TJOFLAT Chief Judge, and BIRCH AND DUBINA Circuit judges.

91-5206 Transferred and filed in the United States Court of Appeals on November 7, 1991 as 91-2237 denied August 3, 1992.

2974-88 TAX COURT decision from appeal of Commissioner of Internal Revenue on March 12, 1990.

2974-88 All of the appeals in the TAx Court exhausted and within ninety (90) days of Motion to Revise Decision on

UNITED STATES TAX COURT
Washington,DC 20217

APR 11 1991

Mr. Miguel Clerk
United States Court of Appeals
for the Eleventh Circuit
56 Forysth Street, N.W.
Atlanta Georgia 30303

Re: Alex L. Polyak and
Earlene Polyak
Petitioners-Appellants
Earlene Polyak
v
Commissioner of Internal Revenue
Docket no. 2794-88

Dear Mr. Cortez:

There is transmitted herein, under my certificate, the record on appeal in the above entitled case, together with, but separately cerified, the original exhibits.

Appeal is taken by the petitioner Earlene Polyak. Address of appellant is 4063 Hood Road, Palm Beach Gardens, florida 33410.

Counsel for the commissioner of internal Revenue are Shirley Peterson, Ass Attorney General, Tax Division United States Dept. ofJustice P.O. BOX 502 Washington D.C 20044, upon whom service of documents and papers in the court of apepals is to be made, and Abraham N.M. Shashy Jr. Chief counsel Internal Revenue Service.

Yours very truly,
Charles S.Casazza
Clerk

Enclosures (1) volume records
(2) Folder of Exhibits

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

IN RE: EARLENE POLYAK FILED AUG 26 1992

No. 91-5451
NO. 2794-88

On Petition for Writ of Mandamus to the United states District court for the Southern District of Florida *

BEFORE :TJOFLAT Chief Judge, BIRCH and DUBINA Circuit Judges.

Petitioner's petition for rehearing en banc of this Court's order dated November 1, 1991, denying her motion for leave to file a mandamus petition in forma pauperis treated as a request for reconsideration is denied.

NO SIGNATURE

Note: This U.S. Tax Court and Commissionar o Internal Revenue has never been in the U.S. Distrct Court in Southern District of Florida, and Petitioner has never applied forma pauperis in any Court.

No. 91-5206

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EARLENE POLYAK

FILED NOV 11 1991

V

COMMISSIONER OF INTERNAL REVENUE

Appeal from the United States Tax Court for Southern District of Florida

BEFORE: JOHNSON, HATCHETT and ANDERSON Circuit Judges

BY THE COURT:

Appellee's motion to transfer appeal to court of appeals having proper venue is granted.

This appeal is transferred to the United States Court of Appeals for the Sixth circuit.

No. 91-5206
U.S. DEPARTMENT OF JUSTICE
TAX DIVISION

April 24, 1991

Miguel J. cortez,Esquire
Clerk U.S. Tax court
for the Eleventh Circuit
56 Forysth Street
Atlanta, Georgia 30303-3147

Re:Earlene Polyak v. commissioner
(11th Cir. No. 91-5206

Dear Mr. Cortez:

We are transporting herewith for filing with your court an original and three copies of a motion to transfer the above appeal(TITLE IV REVIEW) to the United States court of Appeals for the Sixth Circurit. Please be submit the motion to the Court and advise of the action taken therto

This case is currently assigned to Joel Rabinovitz of this office, who may be reached at (202) 514-2944 or FTS 368-2944

We are forwarding copies of this letand motion to the appellant, appeaing pro se.

Sincerely yours,
Shirley D. Peterson
Assant Attorney General
Tax Division

By:
Garv R. allen
Chief Appellate Section
Tax division
Department of justice
P.O. Box 502
Washington, D.C. 2004

No. 91-5206

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EARLENE POLYAK
Petitioner-Appellant APR 24, 1991

v

COMMISSIONER OF INTERNAL REVENUE
Respondent-appellees

MOTION TO TRANSFER APPEAL TO
COURT OF APPEALS HAVING PROPER VENUE

Comes now the Commissioner of Internal Revenue, appellee herein, by and through his counsel, and respectfully moves this Court to enter and order transferring the appeal in the above captioned case case to the United States Court of Appeals for the sixth circuit, and in support of this motion states as follows:

1. At the time Earlene Polyak (taxpayer) filed her petition 9jointly with her husband) in the United States Tax Court, the decision of which only taxpayer now appeals, she recited that she was a legal resident of Trenton, Michigan which lies within the United States Court of Appeals for the Sixth circuit.the Tax Court in its opinion, similarly found that the taxpayer was a resident of Michigan at the

time her petition was filed. Polyak v Commissioner., 94 T.C. 337 338(1990).

2. Section 7482(b) Of the internal Revenue Code provides that the proper venue for review os decision of the Tax Court is the United States court of Appeals for the Circuit which contains legal residence of the Petitioner. For these purposes, the legal residence of the pettioner is determined as of the time the petition was filed in the Tax Court SEc.7482(b).Becker v Commissioner 852 F. 2d 524(11th Cir).Although Section 7482(b) provides that the parties may stipulate in writing to have the appeal heard in a different Court of Appeals, here the parties have not stipulated(TITLE IV REVIEW). Accordingly, venue is proper in this Court , Becker v Commissioner, 852 F.2d at 525.

4. Since venue is improper in this court, this appeal (TITLE IV REVIEW) should be transferred to the circuit in which venue properly liesBeckler v Commissioner, 852 2d 526:Dorbush v Commissioner860 F.2d 611 612-615(5th Cir 1988):Alexander V commissioner, 825

F. 2d 499, 502(D.C. CiR1987).

Wherefore, the commissioner respectfully requequests that this Court enter an order transgerring the above-captioned appeal(TITLE IV REVIEW) to the United States Court of Appeals for the Sixth Circuit.

Stamped Gary Allen
Chief, Appellate Section
Tax Division
Department of Justice
P.O. Box 502
Washington, D.C. 20044

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

May 15, 1992

Leonard Green Clerk
United States court of Appeals
Sixth Circuit
538 P.O. & courthouse
5th and Walnut Streets
Cincinnati, Ohio 45202

91-5206

Dear Mr. Green:

Enclosed please find Mrs. Polyak's petition for rehearing en banc which was received in this office today. Also enclosed is an envelop of exhibits which were omitted in error when this appeal was transferred to the Sixth Circuit.

If this office can be of further assistance, Please advise.

Sincerely,

MIGUEL J.CORTEZ
Signed Margaret MacDonald
Deputh clerk

:mam
cc: Earlene Polyak
Encl.

U.S. DEPARTMENT OF JUSTICE
TAX DIVISION

APR 22 1991

Ms. Earlene Polyak
4063 Hood Road
Palm Beach Gardens Fl 33410

Re: No. 91-5206 (TITLE IV REVIEW)
Dear Ms, Polyak:

We have responsibility for representing the Government on appeal(TITLE IV REVIEW) is now assigned to the appellate Division, Department of Justice,Further correspondence including your brief should therefore be directed to this office at the address below.

Siccerely Shilrey peterson
Assistant Attorney General
Tax Division

By: Garry allen
Chief Appellate Division
Tax Division
Department of Justice
P.O. 502
Washington, D.C. 20044

cc: Miguel Cortez, Esquire
Clerk U.S. Court of Appeals
for the Eleventh Circuit
56 Forysth Street N.W.
Atlanta, Georgia 303-3147

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

October 15, 1991

John Cardone
Department of Justice
Tax Division-Civil Trial Nothern
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044
Re: 91-5206;Polyak v IRS
U.S Tax Court No. 2794-88

Dear Mr. Cardone:

Pursuant to your request,this letter serve as confirmation that Earlene Polyak has an appeal pending in this Court. Her notice of appeal was filed March 7, 1991 and is presently pending before the Court on Appellee's motion to to transfer appeal to court of proper venue and appellant's motion to correct the record and add exhibit and oral argument for denial of due process and writ of mandamus and grievance

If we can be of further assistance please advise.

Sincerely,
MIGUEL J. CORTEZ,CLERK
Signed Margaret Mac-
Donald Deputy Clerk

:mam

APPENDIX C

In the United States Tax Court an appeal to the Commissioner of Internal Revenue' s decision .. No. 2974-88

TRIAL: Miami, Florida

DATE: November 28, 1988

DATE: December 1, 1988

Decision: March 12, 1990

Before: Special Trial Judge: Marvin Peterson

22040 Small Tax Case;

Date Trial May 4, 1988
September 29, 1988

No. 2794-88
UNITED STATES TAX COURT

EARLENE POLYAK

v

COMMISSIONER OF INTERNAL REVENUE

PETITION TO ENJOIN AND SET ASIDE AND MOTION TO FORWARD RECORDS

Petitioner moves to forward records in the above case to the United States Court of Appeal for the Eleventh Circuit for review of denial of Motion to Vacate Decision IRC 162 United States Tax Court, pursuant to TITLE IV REVIEW AND ENFORCEMENT OF COMMISSIONERS ORDERS AND OFFICERS, at Atlanta, Georgia 30303.

This Court denies due process of Motion to Full court, and Review of these motions by the full Court for a New Trial IRC 162 U.S. Tax Court.

Petitioner moves to enjoion and set aside alleged deficiency of six hundred forty-eight ($648.00) and any interest, and other charges denied in Motion to Revise and Vacate Decision On 4th day of March 1991 IRC 162 Tax Court

Respectfully submitted,

Earlene Polyak
4063 Hood road
Palm Beach Gardens
Florida 33410

Certificate of Service

I certify tha a true copy of this pleading has been mailed to Mr. W. Robert Abramatis, 114 Federal Building,114 Federal building Miami, Florida 33130.

Earlene Polyak

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DKT.NO(s). 2794-88
The enclosed documents Petition to enjoin and set aside and motion to forward records received 3/8/91 are returned unfiled

FORM AND STYLE
X improper joining of motions See Rule 54

STATUS OF REPRESENTATIVE
No entry

CONSOLIDATION
No entry

MISCELLANEOUS

X The record will automatically be forwar-by this Court to the Court of Appeals.The notice of appeals has been filed. A $100.00 filing fee is required.

Office of the Clerk

Date 3/18/91

Form no. 133
(Rev 9/90

UNITED STATES TAX COURT

ALEX POLYAK AND
EARLENE POLYAK

Petitioners

v Docket No. 2794-88

COMMISSIONER OF INTERNAL
REVENUE

DECISION

Pursuant to the opinion of the Court filed March 12, 1990, and incorporating herein the facts recited in the respondent's computation, it is

Ordered and decided: That there is a deficiency in income tax from the petitioner income tax due from the petitioner for the taxable year 1984 in the amount of 648.00.

Entered

UNITED STATES TAX COURT

ALEX POLYAK AND
EARLENE POLYAK

Petitioners

v No. 22040-88S

COMMISSIONER OF INTERNAL
REVENUE

DECISION

Pursuant to the opinion of the Court rendered on May 4, 188, pursuant to T.C. Rule 152 (b) served on the parties by the Clerk of the Court on June 15, 1988, and incorporating herein the facts recited in Respondent's computation for Entry of Decision as findings of the court it is;

ordered and decided: that there is an over payment of$1089.00 which amount was paid April 15,1984(statutory date) for which amount of claim could have been filed under provisions of IRC 6511(b0(2) on April 10, 1987, the date of mailing of the notice of deficiency.

signed Norman H. Wolfe
Entered SEP 29, 1988.

APPENDIX C1

In the United States Court of Appeals for the Sixth circuit No. 92-1658.

92-1658 Earlene Polyak v the Commissioner of Internal Revenue and the United States Tax Court.

Denied: August 18, 1992

Before:KEITH and BATCHELDER Circuit Judges, and HOOD District judge.

In the United States District Court, Eastern Division at Detroit.

91-CIV-722329 ZATKOFF

Denied: April 21, 1991

Petition for Rehearing: This petition was never acted upon therefore NO NEW NOTICE of APPEAL April 29, 1991.

Notice of Appeal: May 15, 1992.

Petioner objected to this case being assi- to a Magistrate without her consent 28 U.S.C. 636(c)(1).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF DETROIT

RE: EARLENE POLYAK
EARLENE POLYAK

Plaintiff FILED MAY 15 1991

v No. 91-CIV-722329 ZATKOFF

U.S.TAX COURT AND COMMISSIONER
OF INTERNAL REVENUE

NOTICE OF APPEAL

Plaintiff gives notice of appeal to the abuse of discretion in the denial of jurisdiction in biased misrepresentation to Mr. Patrick Mullarkey Ass. U.S. Attorney without due process of oral argument and delay in action on petition for rehearing on original juris diction to the United States court of appeals for the Sixth circuit pursuant to Rule 60.02 FRaud(whether intrinsic or extrinsic) and misrepresentation by adverse party,pursuant FRcivP and 42 USC 1981,1982, 1983; Civil Rights Act 1964, as amended to provide relief for intentional discrimination against federally protected rights Public law 102-166. (313) 676-3364

Earlene polyak, 3179 Middlefield Dr.
Trenton, Mcihigan 48183 (313) 676

I certify that copy served Mr. P Mullarky Washington. D.c. 20044. Earlene Polyak

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVIDION

EARLENE POLYAK
Plaintiff

APRIL 21 1991

v

COMMISSIONER OF INTERNAL REVENUE

JUDGMENT

It is ordered and adjudicated that this action is hereby dismissed pursuant to the Memo randum Opinion and Order dated April 21, 1992.

Dated in Detroit, Michigan this 21,day of April 1992.

JOHN P. MAYER
CLERK OF THE COURT

APPROVED:
LT ZATKOFF

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE
FOR FILMING 32

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF

EARLENE POLYAK

v

FILED APRIL 21, 1992

No.91-CV-73329 DT

COMMISSIONER OF INTERNAL REVENUE
AND U.S. TAX COURT

MEMORANDUM OPINION AND ORDER

AT A SESSION of said Court, held in United States Courthouse, in the City of Detroit, State of Michigan, on the 21st day of April 1992.

PRESENT :THE HONORABLE P.ZATKATOFF
UNITED STATES DISTRICT JUDGE

This a civil action filed pro se by plaintiff Earlene Polya [1] challenging a United States Tax Court decision. Polyak's complaint includes vague allegations regarding denials of civil rights, including due process. In her complaint, Polyak seeks compensatory, punitive and injunctive relief.

[1] Plaintiff-Polyak has been a frequent and proflic litigator in the Sixth Circuit: Hulen v Polyak 91-5655/5656/5657;Ploy ak v Hulen 89-6271; Hulen v Polyak 89-5648/5650;Polyak v Evans & Son 89-5320; Lesnansky v Polyak 87-627;Polyak v Judge hamilton 85-6134;Hulen v Polyak 84-8960-845032

This matter is before this Court on the defendant Commissioner of Internal Revenue's motion to dismiss based on (1) lack of subject matter jurisdiction,(2) res judicata, and (3) sovereign immunity.Polyak has filed a response brief.Pursuant to E. Mic Local R.&(e)(2) the Court orders that the motion be submitted and determined on briefs.

BACK GROUND

As therapy for a heart ailment, Polyak's doctor advised her to reside in a warm climate during the winter months. In the case Alex Polyak and Earlene Polyak v Commissioner of Internal Revenue 220407-87 S United States Tax Court October 16, 1991) Polyak was denied a request to deduct her taxab income travel expenses associated with her stay in Florida during certain winter months in 1983.the Tax Court decision was based on Cir v Bilder 369 U.S.499 1962.

In this action, Polyak claims that the tax court and the commissioner deprived her of due process of law. Polyak characterizes her calims

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING 35

> Plaintiff's grievances against the denial of due process and deprivation of Civil and constitutional laws and rights and the Internal RevenueCode by the Commissioner of Internal Revenue are grounded in untimely issued audit, failure to stipulate with Tax consultant, withholding of evidence, jeopardizing physician-client(patient) relationship and other grievances in 2794-88 Alex and Earlene Polyak v Commissioner of Internal Revenue for tax year 1984. petitoner discriminated against in disallowed Individual Deductions.
>
> Plaintiff's complaint and demand for a jury trial for relief includes the denial of due process and deprivation of civil and constitutional laws and rights, and Internal Revenue Code to denial of due process in in 1983 delay 22040-87S Alex and Earlene Polyak v commissioner of Internal Revenue.
>
> (T)he core issue in complaint and jury trial for relief in damages is that Petitioner did not receive deductions for medicare(sic) Medical IRC sec 213 for diagnosis, cure, and prevention of disease, or for the purpose of affecting any structure or function of the body, and new provivisions enacted in 1984.

See Plaintiff-Polyak's response brief entitled In Reply to Misrepresentations and Motion to Strike at 1-25. Polyak is clearly challenging the result of former adjudications or is raising new issues that could have been raised in the previous case before the Tax Court.

IIDISCUSSION

For two reasons, Polyak's claims fail as a matter of law. PPolyak's claims are barred by res judicata. the doctrine of res judicata applie in tax litigation to preclude repetitions suits involving the same cause of action or matters that could have been litigated in a previous law suit United States v Carter, 906 F 2d 1375(9th Cir 1990). Polyak's attempts to relitigate previ ous decided cases or to litigate related issues is barred by by preclusive effect of Tax Court's former adjudication. Polyak's request for injunctive reliev is barred by the Anti-injunction Act 26 U.S.C. 7421, which prohibits actions to enjoin the Internal Revenue's attempt to collect taxes.

For all of the reasons stated above, the Court concludes that Plaintiff-Polyak's action against the defendant commissioner of Internal Revenue is legally deficient. Defendant Commissioner's motion to dismiss is hereby granted.

Signed L.P. Zatkoff

Noel J. Fenibero
Attorney at Law
12550 Biscayne
North Miami,Florida 33181

October 4, 1991

Honorable Lawrence Zatkoff
Judge United States District Court
Eastern District of Michigan
231 West layette Street
Detroit, michigan 48226

Re: Earlene Polyak v Commissioner of
Internal Revenue 91-CV 73229DT

Dear Judge Zatkoff

Please be advised that on october 1,1991 my brother-in-law Rodney Herman received a copy of the Complaint in reference to this matter.Attached to the complaint was a summons naming him as a defendant.A copy of said cummons is enclosed.

I called the Clerk's Office and they informed me that Dr. Herman is not a defendant in this matter and due to clerical error the enclosed summons was issued in and should not have been.

I am sending a copy of this letter to the Clerk's office requesting that they put same in the aforementioned file.

Respectfully submitted,
Noel J Feinburg
cc: Rodney herman M.D.

No. 92-1658

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED AUG 18 1992

v

INTERNAL REVENUE SERVICE
UNITED STATES TAX COURT

BEFORE: KEITH BATCHELDER Circuit Judges, and
HOOD District Judge.

Earlene Polyak appeals the dismissal of her civil action in which she sought to challenge certain actions by the defendants undertaken in an earlier tax court case. This case has been referred to a panel of the court pursuant to Rule 9(a) Rules of Sixth.

A review of the record indicates that the judgment of the district court was entered on April 22 1992. Plaintiff served a petition for rehearing on April 29, 1992. Next plaintiff filed a notice of appeal on May 15, 1992. before the district court ruled on her petition for re-hearing.

Generally, a petition for reconsideration on the merits of a decision within 10 days of judg-ment is contrued as a Fed. R.CivP. 59(e) motion

to alter or amend the judgment. White v New Hampshire Dept pf Employment Sec.,455 451(1982).A timely FRcivP.R (e) motion tolls the appeal period. Marrical v Detroit News Inc.805 F 2d 169 171(6th Cir 1986)per curiam). A notice of appeal filed while a timely FrcivP 59(e)motion is pending has no effect.FrcivP.4(a)(4)Osterneck v nest v Ernest Whitney 489 U.S. 169 173-74(1989) A timely notice of appeal is mandatory and jurisdictional Osterneck 489 U.S. 173-74.

Here, plaintiff's notice of appeal filed may 15, 1992 is premature. Plaintiff's petition for rehearing was served within 10 days of the district court's judgment tolling the appeal period. Plaintiff's notice of appeal filed before the district court ruled on motion for reconsideration has no effect.

This appeal dismissed for lack of jurisdiction. Rule 8(a).

ENTERED BY ORDER OF THE COURT

Signed Leonard Green clerk

MANDATE issued without consider rehearing 10/14/92.